

Hearing:

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Paper No. 12

HRW

THIS DISPOSITION IS NOT

CITABLE AS PRECEDENT OF THE TTAB FEB. 22, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re National Express Limited

Serial No. 75/344,926

Norman H. Zivin of Cooper & Dunham LLP
for National Express Limited.

Craig D. Taylor, Senior Attorney, Law Office 107
(Thomas Lamone, Managing Attorney).

Before Cissel, Wendel and Holtzman, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

National Express Limited, a corporation in the United
Kingdom, has filed an application to register the mark
NATIONAL EXPRESS for "transportation of passengers by bus;
travel agency services, namely, making reservations and
bookings for transportation," in Class 39 and "catering
services provided on board buses and at bus stations;

travel agency services, namely, making reservations and bookings for temporary lodging," in Class 42.¹

Registration has been finally refused on the ground that the mark NATIONAL EXPRESS is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs and both participated in an oral hearing.

The Examining Attorney takes the position that the proposed mark merely describes a significant feature or characteristic of applicant's services, namely, that these are transportation services which are nationwide in scope. To support his refusal, the Examining Attorney relies upon the dictionary definitions for "national" as "of or relating to a nation" or "a competition which is national in scope" and for "express" as "a system for the prompt and safe transfer of parcels, money or goods at rates higher than standard freight charges; the goods or shipments to be transported."

Applicant argues that its mark is neither the name of any of the services performed by applicant nor descriptive of any important characteristic or feature of the services.

¹ Serial No. 75/344,926, filed August 21, 1997, under Section 44(e) of the Trademark Act based on ownership of United Kingdom Registration Nos. 1,516,609 and 1,580,591.

Applicant asserts that the selling points for its service may be that it is comfortable or convenient, but not that it is a nationwide delivery. Furthermore, applicant argues, its services are not offered nationally. Its services are presently offered in Europe and although applicant has expansion plans for the United States, there is no evidence that the services will be offered throughout the United States. Even if they are, applicant contends the services would then be "international," not "national." Applicant further argues that the definition proffered by the Examining Attorney for the word "express" is not applicable, in that applicant's services do not involve the transfer of parcels or goods, but rather people.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, quality or feature of the goods or services with which it is being used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). It is not necessary that a term or phrase describe all the characteristics or features of the goods or services in order for it to be considered merely descriptive; it is sufficient if the term describes one significant attribute of the goods or services. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

Thus, we make our analysis of applicant's proposed mark on the basis that to be merely descriptive the phrase NATIONAL EXPRESS need not be another name for the services or describe the particular attributes of the services which applicant considers to be their major selling points. Instead, we consider whether the words NATIONAL and EXPRESS describe one or more features of the services which are not totally insignificant. See *In re National Rent A Fence, Inc.*, 220 USPQ 479 (TTAB 1983).

In the past, the Board has found the term NATIONAL to be merely descriptive of the geographic extent of the services in connection with which it is being used. See *In re Integrated Resources, Inc.*, 220 USPQ 1067 (TTAB 1983); *In re National Rent A Fence, Inc.*, *supra*. A "national" service such as applicant's bus transportation services, and the services ancillary thereto, is one which is nationwide in scope, as opposed to a service which is offered only in certain localities. The nation does not have to be the United States, the word "national" is not country specific. Accordingly, even though applicant is a company located in England, the word "national" is applicable to services offered throughout that country; the services need not be offered in the United States. The term NATIONAL in applicant's proposed mark simply conveys the information to

potential customers that applicant's bus services are nationwide, not local. While this may not be a major selling point, it clearly is an attribute of more than minimal significance. Whether or not applicant later expands its operations to an international scale is immaterial. The question of descriptiveness is determined as of the time registration is being sought.

Turning to the term EXPRESS as used in applicant's proposed mark, we agree with applicant that its bus services are not services which are encompassed by the particular dictionary definition of "express" being relied upon by the Examining Attorney. The Board may, however, take judicial notice of dictionary definitions on its own. See *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852 (TTAB 1981). In the same dictionary relied upon by the Examining Attorney, we find the definition of "express" as "traveling at high speed; *specif*: traveling with few or no stops along the way (~ train)." The term EXPRESS, as thus defined, would obviously be applicable to bus transportation services.² The term merely describes another

² See the definition found for "express" in *Webster's Third International Dictionary* (1976) as

3a: dispatched with or traveling at special or high speed;
specif: traveling between terminal or specified points without stop or with a limited number of stops (an ~ train) (an ~ bus) (an ~ elevator) ---compare LOCAL.

attribute of applicant's services which would not be insignificant to potential customers. Furthermore, the combination of NATIONAL and EXPRESS in no way alters the descriptiveness of each term with respect to a particular attribute of applicant's services.³

Decision: The refusal to register under Section 2(e)(1) is affirmed.

R. F. Cissel

H. R. Wendel

T. E. Holtzman
Administrative Trademark Judges,
Trademark Trial and Appeal Board

³ Applicant notes the two existing registrations for the mark NATIONAL EXPRESS, which were cited by the Examining Attorney under a 2(d) refusal and later withdrawn. We would point out, however, that the registration for the word mark NATIONAL EXPRESS is under Section 2(f) and contains a disclaimer of the word EXPRESS and the registration for the composite mark NATIONAL EXPRESS and design contains a disclaimer of the word EXPRESS. Furthermore, the courier delivery services in those registrations are not the same as the bus transportation services involved here.

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